UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

LEGGETT & PLATT, INC.,
Employer,

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, (IAM), AFL-CIO,
Union,

and

KEITH PURVIS, JAMES GREEN, ALBERT HAWKINS, GLEN DIXON, JACK KEITH, FREDRICK SANDEFUR, BRIAN PATRICK, TIM KEETON, JAMES WELLS, JUSTIN GILVIN, and MARVIN ROGERS,
Proposed-Intervenors.

Case Nos. 09-CA-194057
09-CA-196426
09-CA-196608

PROPOSED-INTERVENORS' RESPONSE TO GENERAL COUNSEL'S MOTION TO STRIKE

On November 20, the General Counsel filed a Motion to Strike. The Motion argues Keith Purvis and his fellow employees' ("Employees") exceptions and brief in support should be stricken because the Employees are not a "party." However, the Motion to Strike ignores that a person seeking intervention is a "party" as defined by the Board's Rules and Regulations. Under Section 102.1(h), a "party" includes a person "properly *seeking* and entitled as of right *to be admitted as a party*" (emphasis added). The General Counsel's Motion is unsupported by the text of the Rules and Regulations, ignores relevant cases where the Board has ruled on exceptions by persons who were denied intervention by an ALJ, and should be denied as frivolous.

The Employees are properly seeking to be admitted as parties to this unfair labor practice proceeding. They filed timely motions to intervene with the Regional Director and the ALJ. After the ALJ denied their Motion, they filed a post-hearing brief arguing intervention was wrongly denied. See RD Decision & Order, at 2, n.4. The Employees then filed timely exceptions challenging the denial of intervention and a brief in support of their exceptions. For the reasons stated in their exceptions, the Employees are entitled to intervene in this case as a matter of right because the ALJ's Decision & Order directly affects their rights to be free of an unwanted union. The Board's Rules and Regulations define party as any person "seeking . . . to be admitted as a party." § 102.1(h). As proposed intervenors, the Employees are "seeking" admission and have a right to file exceptions under Section 102.46 to the denial of intervention.

The General Counsel's motion to strike ignores the fact that the Board defines a party as a person "seeking" intervention in the proceeding. Instead, the General Counsel makes an *ipse dixit* claim unsupported by Board precedent. The General Counsel's claim is anti-textual because it is at odds with the broad definition of party in the Board's Rules and Regulations, which encompasses applicants for intervention, who are clearly "seeking" admission. The General Counsel's implied argument that "party" is narrowly defined would make denials of motions to intervene unreviewable except on interlocutory special appeals—an outcome that is not contemplated or mentioned in the Board's Rules and Regulations governing intervention. *See* Section 102.29. [1]

[1] Moreover, the General Counsel's argument, taken to its logical conclusion, would prevent the Employees from even filing a special appeal. The General Counsel claims only "parties" have the right to file exceptions, but claims proposed intervenors *may* file a special appeal to the Board under Section 102.26. But Section 102.26 also limits special appeals to parties: "The moving *party* must simultaneously serve a copy of the request for special permission and of the appeal on the other *parties* and, if the request involves a ruling by an Administrative Law Judge, on the Administrative Law Judge" (emphasis added). The General Counsel never explains why

Tellingly, the General Counsel cites no case to support her claim that someone "seeking . . . to be admitted as a party" is not actually a "party." Indeed, the Board has ruled on exceptions filed by proposed-intervenors at least two times in the last three years, with or without special appeals being taken from the denial of intervention. In *Veritas Health Services*, 363 NLRB No. 108 (2016), an employee, Jose Lopez Jr., attempted to intervene at the outset of an ALJ trial to defend the General Counsel's challenge to his withdrawal petition. The ALJ denied Lopez's motion and no special appeal was taken. Instead, Lopez filed his own exceptions to the ALJ's ruling before the Board. *Id.* slip op. at *1. The Board ruled on Lopez's exceptions, albeit denying them on the merits. *Id.* slip op. at *1 n.1. The General Counsel also ignores *Latino Express, Inc*., 360 NLRB 911 (2014), in which the Board considered exceptions filed by employees who were denied intervention. In *Latino Express*, the employees did file a special appeal when their motion to intervene was denied by the ALJ. *Id.* slip op. at *1 n.2. The Board rejected this special appeal and the employees subsequently filed exceptions to the ALJ's decision. *Id.* While the *Latino Express* employees' exceptions were rejected on their merits, they were duly considered and were not stricken or ignored precisely because they were properly before the Board. Of course, the General Counsel cites neither of these cases, nor any others supporting its position, because none exist.

The General Counsel's Motion should be denied.

"party" should mean something different under related sections of the rules. While the Employees can file both a special appeal and exceptions given that they are parties "seeking" admission, there is nothing in the rule that requires the Employees to file a special appeal either as a pre-condition to filing exceptions, or as the only route to challenging a denial of intervention.

Respectfully Submitted,

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November 21, 2017

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Proposed-Intervenors' Response to the General Counsel's Motion to Strike were filed and served on the following by electronic filing and email on November 21, 2017:

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